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Reply Comments of Radiofone, Inc.  
Applicant: BellSouth - Louisiana

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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AUG 28 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Second Application by

BellSouth Corporation,  
BellSouth Telecommunications, Inc.  
and BellSouth Long Distance, Inc.

For Provision of In-Region,  
InterLATA Services in Louisiana

CC Docket No. 98-121

To: The Commission

REPLY COMMENTS OF RADIOFONE, INC.

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August 28, 1998

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**SUMMARY**

Radiofone, Inc. (Radiofone) opposes BellSouth's application to provide in-region, interLATA service in Louisiana for three reasons:

1. BellSouth does not comply with the competitive checklist.
2. BellSouth does not face local competition.
3. BellSouth's entry into the in-region interLATA market is not in the public interest.

BellSouth currently is refusing to pay reciprocal compensation to Radiofone's cellular and paging operations, thereby violating Section 251(b)(5) of the Communications Act of 1934, as amended, which is just one item on the competitive checklist. This is just one example in a long history of BellSouth's anticompetitive conduct toward Radiofone, some of which is demonstrated in a pending formal complaint proceeding, Radiofone, Inc. v. BellSouth Mobility, Inc., E-88-109, filed Aug. 2, 1988. BellSouth's propensity to act anticompetitively (which is evidenced by other commenters in this proceeding) calls for a high level of scrutiny, especially when local exchange competition has not evolved in Louisiana. Permitting BellSouth to expand its anticompetitive agenda to the interLATA market thus is not in the public interest.

Radiofone therefore requests the Commission to deny BellSouth's application.

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To: The Commission

**REPLY COMMENTS OF RADIOFONE, INC.**

Radiofone, Inc. (Radiofone), by its attorneys, responds to the Public Notice, DA 98-1364, released July 9, 1998, concerning the application for authorization to provide in-region, interLATA service in Louisiana, filed by the captioned BellSouth entities.

Radiofone provides cellular and paging services in Louisiana, and interconnects with BellSouth's local exchange services. BellSouth currently is refusing to pay reciprocal compensation to Radiofone's cellular and paging operations. BellSouth therefore is not in compliance with Section 251(b)(5) of the Communications Act of 1934, as amended (the Act), which is just one item on the competitive checklist. BellSouth's current refusal to comply with the reciprocal compensation requirements is only one example in a long history of BellSouth's anticompetitive conduct toward Radiofone, some of which is demonstrated in a formal complaint that Radiofone filed in 1988, and which was supplemented in 1991 and 1995. Radiofone, Inc. v.

BellSouth Mobility, Inc., E-88-109, filed Aug. 2, 1988.<sup>1</sup>

BellSouth's propensity to act anticompetitively calls for a much higher level of scrutiny when it proposes to enter markets where, as here, its would-be competitors are so sensitive to anticompetitive abuses. This is especially true when local exchange competition has not evolved in Louisiana. Permitting BellSouth to expand its anticompetitive agenda to the interLATA market thus is not in the public interest.

In sum, BellSouth fails to satisfy three factors considered by the FCC in determining whether to grant a Section 271 application:<sup>2</sup>

1. BellSouth does not comply with the competitive checklist.
2. BellSouth does not face local competition.
3. BellSouth's entry into the in-region interLATA market is not in the public interest.

Radiofone therefore requests the Commission to deny BellSouth's application.

These issues are discussed in turn below.

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<sup>1</sup> See Initial Brief of Radiofone at 3-15, Radiofone, Inc. v. BellSouth Mobility, Inc., E-88-109 (June 10, 1996) (enclosed as Attachment 1)

<sup>2</sup> Application by BellSouth Corporation, et al. Pursuant to Section 271 (Memorandum Opinion and Order), 11 C.R. 328 para. 8 (1998) [hereinafter Louisiana I].

**BellSouth's Refusal to Interconnect**

BellSouth has refused to comply with the reciprocal compensation requirements of Section 251(b)(5). Radiofone requested reciprocal compensation from BellSouth on December 3, 1996,<sup>3</sup> and currently compensates BellSouth for interconnection services it provides in Louisiana at BellSouth's tariffed rates. BellSouth, however, is currently refusing to pay Radiofone any further compensation. Radiofone has reason to believe that BellSouth's refusal to pay reciprocal compensation to Radiofone is grounded upon its refusal to pay charges for paging traffic originating on its network, just as BellSouth has done with other carriers in open defiance of the Commission's Rules.<sup>4</sup> BellSouth has disputed the adequacy of Radiofone's invoices,<sup>5</sup> but these invoices were formatted according to BellSouth's specifications.<sup>6</sup> Altogether, BellSouth currently owes Radiofone approximately \$709,889.00 in unpaid interconnection charges. Although BellSouth is inflicting serious economic losses on Radiofone,

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<sup>3</sup> Letter from Mark Jeansonne, Radiofone, to Victoria McHenry and David Falgoust, BellSouth, dated December 3, 1996 (enclosed as Attachment 2).

<sup>4</sup> See Paging and Messaging Alliance of the Personal Communications Industry Association (PCIA) Comments at 7-11.

<sup>5</sup> Letter from Betty Jones, BellSouth Service Representative, to Mary Bennett, Radiofone, dated July 24, 1998 (enclosed as Attachment 3).

<sup>6</sup> Letter from Randy Ham, BellSouth, to Mark Jeansonne, Radiofone, dated December 11, 1996 (attaching sample bill format) (enclosed as Attachment 4).

Radiofone cannot sever its business relationship with BellSouth given its overwhelming control of Louisiana's local exchange market and infrastructure.

BellSouth's refusal to fully compensate Radiofone is not an isolated instance. BellSouth's systematic refusal to meet its reciprocal compensation obligations to other carriers reveals an anticompetitive policy of leveraging its market power in Louisiana and other states. As demonstrated by the comments submitted by AT&T Corp., MCI Communications Corporation, Sprint Communications Company LP, Hyperion Telecommunications, Inc., Intermedia Communications Inc., KMC Telecom Inc., Cox Communications, Inc., the Association for Local Telecommunications Services, and the PCIA,<sup>7</sup> BellSouth consistently refuses to fully pay reciprocal compensation to other carriers despite the plain requirements of Section 251(b)(5) of the Act. BellSouth's actions warrant enforcement action by the Commission rather than the award of any competitive benefit under Section 271.

As the Commission stated in Louisiana I, BellSouth must show that it has fully implemented the competitive checklist,

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<sup>7</sup> AT&T Comments at 75-76; Sprint Comments at 56-57; Hyperion Telecommunications, Inc. Comments at 3-7; Intermedia Communications Inc. Comments at 24-25; KMC Telecom Inc. Comments at 24-28; Cox Comments at 2-3; Association for Local Telecommunications Services Comments at 18-19; PCIA Comments at 2-11.

including its reciprocal compensation obligations.<sup>8</sup> BellSouth has failed in this regard, and will continue to come up short until it pays reciprocal compensation to all carriers for all telecommunications services, without reservations, without qualifications, and without gamesmanship.

**BellSouth Does Not Face Local Competition**

A second factor to be considered in evaluating BellSouth's application is whether it faces local competition. BellSouth states that six facilities-based wireline carriers in Louisiana together serve 4,282 local lines.<sup>9</sup> When compared to BellSouth's 2,208,471 lines,<sup>10</sup> there can be no question that BellSouth retains a monopoly position in Louisiana.

The Louisiana Public Service Commission would have the FCC believe that the resale of 41,998 lines constitutes sufficient local competition.<sup>11</sup> But 41,998 lines represents less than 2% of the lines served by BellSouth. BellSouth still is a monopoly regardless of how the competition is measured.

And that monopoly is increasing rather than decreasing. In 1996 BellSouth served a total of 2,134,251 switched access

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<sup>8</sup> Louisiana I para. 8; 47 U.S.C. § 271(c)(2)(B).

<sup>9</sup> Application at 6.

<sup>10</sup> BellSouth's 1997 ARMIS Report 43-08 (available on FCC State Link Bulletin Board).

<sup>11</sup> LPSC Comments at 8.



lines.<sup>12</sup> As noted above, this number increased to 2,208,471 lines in 1997 -- an increase of 74,220 access lines. In other words, the increase in BellSouth's lines is greater than the number of lines served by facilities-based CLECs plus the number of lines served by resellers. If BellSouth faced true competition, its customer base would not be increasing, and certainly not increasing faster than that of all of its wireline competition.

Without the full and irreversible opening of local markets to competition, BellSouth's application should be denied.<sup>13</sup>

#### **BellSouth's History of Anticompetitive Practices**

A third reason why the Commission should deny BellSouth's application is the likelihood that BellSouth's propensity to behave anticompetitively will transfer to the interexchange market. BellSouth's record of anticompetitive conduct toward Radiofone is documented in Radiofone, Inc. v. BellSouth Mobility, Inc., E-88-109, filed Aug. 2, 1988. In particular, BellSouth's wireless operations have unlawfully discriminated in favor of their own affiliates, at the expense of Radiofone and its customers in the matter of cellular roaming. The damages

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<sup>12</sup> BellSouth's 1996 ARMIS Report 43-08 (available on FCC State Link Bulletin Board).

<sup>13</sup> Department of Justice Comments at 41.

suffered by Radiofone are estimated to be over \$17 million, as of two years ago.<sup>14</sup>

BellSouth even admits that it "has honed its marketing skills as a wireless carrier in Louisiana."<sup>15</sup> It has advertised that it provides roaming services for no additional fee -- the same roaming services that it provides to Radiofone's customers for a fee.<sup>16</sup> In addition, BellSouth denied roamer access to Radiofone's subscribers, billed Radiofone roaming airtime fees that were higher than BellSouth's tariffed rates, and refused to issue credits for these actions.<sup>17</sup>

Yet BellSouth would have the Commission believe that "these experiences will enable BellSouth to provide better interexchange services to Louisiana and to sell them effectively."<sup>18</sup> If its marketing techniques were transferred from its wireless operations to the wireline interexchange market, BellSouth would price its interexchange services to its wireless customers significantly below its direct costs, while pricing services essential to its competitors at higher levels -- a classic anticompetitive price squeeze. The Commission should protect the

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<sup>14</sup> Initial Brief of Radiofone at 45-46, Radiofone v. BellSouth (enclosed as Attachment 1).

<sup>15</sup> Application at 86.

<sup>16</sup> See Initial Brief of Radiofone at 3-5, Radiofone v. BellSouth (citing Complaint which enclosed a BellSouth advertisement) (enclosed as Attachment 1).

<sup>17</sup> Id. 6-15.

<sup>18</sup> Application at 86.

interexchange market from such potentially anticompetitive practices by denying BellSouth's application here.

Radiofone's concerns are not hypothetical. As confirmed by the comments filed by State Communications, Inc., BellSouth is engaging in conduct toward State Communications, Inc. that is eerily similar to its conduct toward Radiofone. State Communications states that BellSouth told one State Communications customer that BellSouth would terminate their call waiting services, and told another customer that BellSouth would terminate their access to memory call services.<sup>19</sup> In Radiofone's case, BellSouth actually terminated roamer service for Radiofone's customers roaming in Lafayette, Louisiana and in other instances, in Plaquemine, Louisiana.<sup>20</sup>

OmniCall, Inc. and State Communications also complain about BellSouth's delays and intransigence in responding to requests for service.<sup>21</sup> Radiofone similarly has experienced BellSouth's delays in remedying service problems. For instance, the Lafayette, Louisiana roaming problem (contained in Radiofone's complaint proceeding) was not resolved until five months after Radiofone reported the problem to BellSouth and was forced to

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<sup>19</sup> State Communications Comments at 2.

<sup>20</sup> Initial Brief of Radiofone at 9, 13, Radiofone v. BellSouth (enclosed as Attachment 1).

<sup>21</sup> OmniCall Comments at 4; State Communications Comments at 2.

seek the assistance of the Commission's Enforcement Division.<sup>22</sup>

Cox Communications tells of BellSouth's attempts to frustrate its entry as a local competitor.<sup>23</sup> Once BellSouth's procedural objection was disposed of, Cox received its CLEC certificate.<sup>24</sup> Radiofone experienced a similar attempt by BellSouth to frustrate its ability to compete in the Louisiana cellular market. Specifically, in 1991, BellSouth planned to provide cellular service to its Baton Rouge customers when they were traveling in adjacent service areas, but refused to provide similar service to Radiofone's customers when they were traveling in the same areas.<sup>25</sup> The FCC acknowledged the discrimination evident in BellSouth's plans and granted BellSouth's cell site application on the condition that BellSouth provide service to Radiofone's customers.<sup>26</sup> BellSouth's anticompetitive animus against Radiofone was so pronounced, however, that it returned its authorization to construct the site rather than allow the provision of service to Radiofone's customers.<sup>27</sup>

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<sup>22</sup> Initial Brief of Radiofone at 9, Radiofone v. BellSouth (enclosed as Attachment 1)

<sup>23</sup> Cox Comments at 13.

<sup>24</sup> Id.

<sup>25</sup> Initial Brief of Radiofone at 12, Radiofone v. BellSouth (enclosed as Attachment 1).

<sup>26</sup> Id.

<sup>27</sup> Id.

The potential for BellSouth's anticompetitive conduct in the interLATA market should cause the Commission to give heightened scrutiny to BellSouth's application. The process of energizing competition in the long distance market must not come at the expense of competition in other telecommunications markets in Louisiana.

Conclusion

Grant of BellSouth's application would amount to a reward for BellSouth's anticompetitive actions, and give BellSouth the opportunity to expand its anticompetitive tactics to the interexchange market, when competition is more a concept than a reality. The Commission should not add fuel to the fire by granting BellSouth's application after which its motives to act anticompetitively will only increase.

Respectfully submitted,

**RADIOFONE, INC.**

By

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August 28, 1998

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Radiofone, to Victoria  
McHenry and David Falgoust,  
BellSouth, dated December 3,  
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3

Letter from Betty Jones,  
BellSouth Service  
Representative, to Mary  
Bennett, Radiofone, dated  
July 24, 1998

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Letter from Randy Ham,  
BellSouth, to Mark Jeansonne,  
Radiofone, dated December 11,  
1996

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**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Federal Communications Commission

In the Matter of	)	
	)	
Radiofone, Inc.,	)	
Complainant	)	File No. E-88-109
v.	)	
BellSouth Mobility, Inc.,	)	
Defendant	)	

INITIAL BRIEF OF RADIOFONE, INC.

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June 10, 1996



I. STATEMENT OF THE CASE AND FACTS

A. The August 2, 1988 Complaint

As previously discussed, the August 2, 1988 Complaint detailed several unlawful BMI practices adversely affecting Radiofone and its customers. The first such practice concerned BMI's discriminatory application of a \$2.00 per day roamer set-up fee to Radiofone (and ultimately its customers roaming on BMI-affiliated systems). The Complaint specifically detailed the roamer agreement Radiofone was required to sign in order to obtain automatic roaming in BMI cellular markets, e.g., Complaint, at 4-5, Attachment A, and the fact that despite the "pass-through" requirements of the agreement, requiring carriers to flow through the set-up charge to their customers, BMI was in fact waiving the charge at retail, id. at 5. As a result, Radiofone was forced to absorb those same costs, with the resulting financial damage to Radiofone, in order to remain competitive with BMI and its affiliates. Id. at 4.

Radiofone complained that this practice was unlawful for several reasons. First, the failure to pass-through the fee reflected the fact that, upon information and belief, the \$2.00 per diem charge was "at most . . . an accounting entry only" between BMI affiliates. Id. at 10. As such, the assessment of the fee in real dollars to Radiofone unreasonably discriminated against Radiofone, contrary to Section 202(a) of the Act, by favoring BMI's affiliated enterprises. Id. at 10-12. Alternatively, to the extent that BMI affiliates were really

assessed the charge, its failure to assess this fee at retail resulted in BMI's selling its roamer service substantially below its incurred costs. Id. The Complaint noted the anticompetitive and predatory nature of this type of pricing, and further noted that BMI had engaged in an advertising campaign to tout the results of those unlawful tactics. The Complaint pointed out that such anticompetitive activity was also proscribed by Section 314 of the Act and Commission precedent. Id. at 12-14, 17.

BMI answered these charges by initially claiming that it assessed the \$2.00 per diem fee from the "wholesaler" level (i.e., the BMI cellular licensee) to the retail level (i.e., BMI acting as the retail arm). Answer, at 6. BMI even claimed that its wholesale subsidiaries charged other BMI wholesale affiliates the \$2.00 fee when customers of those entities were roaming in BMI affiliated markets. Id. at 12. BMI also attached the sworn affidavit of Roy Etheridge, General Manager, New Markets for BellSouth Mobility, Inc. Mr. Etheridge's affidavit, among other things, reaffirms a conversation with Harrell Freeman, the Vice President of Radiofone, to the effect that the "wholesale daily rate" of \$2.00 was applied to all resellers equally, including BMI's own retail operations. Id. Attachment 13, para. 5. BMI admitted that it did not recover the \$2.00 charge at retail; however, it claimed that this cost was recovered "through its overall rates to cellular subscribers" rather than through a particular charge. Id. at 6.

These blandishments proved to be false. The Enforcement Division, perhaps intrigued by BMI's inconsistent statements that it was recovering the charge through its overall revenues, but that it should not be required to price its retail offerings at a level at least equal to its wholesale prices,<sup>1</sup> scheduled discovery by letter dated February 9, 1989. As is discussed in greater detail in the argument portion of this brief, BMI was forced to admit that it had not been assessing the charge to its retail operations. See Affidavit of William T. Bishop, Jr., filed March 1, 1989.

Moreover, as a result of a deposition of Mr. Bishop, the BMI auditor, BMI was unable to substantiate that it had billed the roamer charge to its wholesale affiliates. Affidavit of Hugh Larkin, Jr., filed March 31, 1989.

As a result of this discovery, it became apparent that, at best, BMI's management did not have the most basic information necessary to ensure the non-discriminatory application of the roamer set-up fee; nor indeed was an internal inquiry made by BMI until after BMI's false assurances were made in pleadings and affidavits to this Commission, and until after the Enforcement Division authorized an inquiry into the matter.

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<sup>1</sup> These inconsistent statements appear in BMI's Answer, at 6, and its Motion to Dismiss, at 10. Indeed, these inconsistent statements, together with the fact that no written agreements existed between the BMI corporate layers, led Radiofone to later question whether the charge was assessed against the BMI affiliates in the first instance. Reply, at 5-6.

As set out in the Complaint, the discriminatory application of the \$2.00 roamer fee to Radiofone was not BMI's only anticompetitive activity. BMI also denied roamer access to Radiofone's subscribers, billed Radiofone incorrect (and higher) roamer airtime fees, and refused to issue credits. Additionally, BMI refused to reconnect roamer service in what is most accurately described as strong-arm tactics. In this latter circumstance, service was only restored after Radiofone sought the informal assistance of the Enforcement Division. These episodes are discussed below.

The first disconnection of roamer service discussed in the Complaint concerns Radiofone customers using the 450-8XXX number block. Radiofone customers served on this number block were customers obtained via resale by Radiofone during BMI's "headstart" period in New Orleans. See Complaint, at 6 n.8. The number block by which those customers were served was assigned to BMI. Id. This is because BMI and its affiliates refused to assign Radiofone its own block of numbers when Radiofone was forced to act as a reseller during BMI's "headstart" period. See Reply, at 8 n.3, Attachment A. BMI acted unreasonably in this respect, as Mr. Freeman, of his own personal knowledge, stated that other cellular carriers had not followed this practice. Reply, Attachment A, at 3. Mr. Freeman had discussed with Mr. Bill Brown (of BMI) Radiofone's intention to transition off this number block through a process of

customer attrition. Radiofone had no warning prior to the disconnection of its customers' roamer service. Id.

While not denying that the disconnection took place, BMI variously describes the disconnection as "technical occurrences," Answer, at 7 n.4, and caused by BMI's adoption of a positive validation system by the cellular industry, id. Attachment 14 (Affidavit of BMI employee Melba Martin). Predictably, it also blames Radiofone for "procrastinating" in "returning BMI's numbers." See id. Attachment 14, para. 4.<sup>2</sup>

Viewed in a light most favorable to BMI, the disconnection of roaming capability might be chalked up to negligence; for instance, Ms. Martin's Affidavit recounts her failure to realize the effect of positive roamer validation on Radiofone's "450-8XXX" customers.<sup>3</sup> BMI's actions following the disconnection, however, were nothing but an intentional attempt to interfere with Radiofone's business.

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<sup>2</sup> As the record demonstrates, BMI frequently attempted to blame others during the course of this controversy.

<sup>3</sup> BMI's suggestion that Radiofone was at fault, although a familiar refrain, is wanting. As Radiofone's Reply pointed out (at 8 n.3), BMI has no ownership interest in the number block in the first instance. This Commission has previously ruled that carriers do not "own" NXX codes and numbers under the North American Numbering Plan. Memorandum Opinion and Order, 59 RR 2d 1275, 1284 (1984). Radiofone's desire to transition its customers off this particular number block was only an accommodation to BMI. Radiofone was under no legal compulsion to act in this manner and, BMI's assertions to the contrary notwithstanding, nothing about those circumstances justified the discontinuation of roamer service, without warning, to Radiofone's customers.

Specifically, as Mr. Freeman's affidavit makes clear, Radiofone encountered a series of BMI stalling tactics when it attempted to have roaming service restored. First, BMI's roamer coordinator informed Radiofone that, although BMI was aware that Radiofone's roamer customers had been denied access, that individual was not authorized to reactivate the service. The following day, Mr. Freeman faxed a letter to the President of BMI, Mr. Robert Tonsfeldt, and received a call back from Mr. Roy Etheridge. Again, Mr. Etheridge would not commit to reactivate Radiofone's customers' units. The next day, June 10, 1988, Mr. Etheridge again refused to reactivate Radiofone's units. See Freeman Affidavit, passim.

Radiofone's counsel then contacted Howard Wilchins, the Commission's Deputy Chief, Enforcement Division, to achieve a speedy restoration of service to Radiofone's customers. A meeting was held on June 14, 1988, wherein BMI's representative promised that Radiofone's service would be restored the next day. Radiofone was then informed that service would only be restored after it signed an agreement: (1) guaranteeing payment for roamer service (it is relevant that Radiofone had a perfect payment record with BMI, and BMI did not claim otherwise); and (2) agreeing to convert Radiofone's "450-8XXX" customers to the number block which had eventually been assigned for Radiofone's benefit by BMI and its affiliates.

BMI also warned Radiofone that it would disconnect its roamers' service again, by June 21, 1988, if it didn't sign the .

agreement. Radiofone did not sign the proposed agreement. Instead, Mr. Wilchins directed BMI to restore Radiofone's roamer service immediately. He also directed BMI not to terminate service on June 21, 1988. After further delay on BMI's part, the roamer service was finally restored. See Complaint, at 5-7, Attachment E. All of this occurred while Radiofone was in the teeth of a BMI local advertising and marketing campaign touting the automatic roaming capabilities of BMI, versus an alleged, lesser standard of service by competitors like Radiofone. See Reply, Attachments A, B.

In addition to the disconnection of roamer service for Radiofone's 450-8XXX customers, the Complaint also sought redress for the disconnection of Radiofone's customers roaming in BMI's Lafayette, Louisiana territory, and for BMI's refusal to correct erroneous airtime billings. See Complaint, at 8. As with the 450-8XXX number block, roaming capability for the Lafayette customers of Radiofone was not restored until after Radiofone sought informal assistance from the Commission's Enforcement Division in July of 1988; it had been complaining to BMI about the problem since February 29, 1988. See id. at 8, Attachments F, G.

BMI's Answer principally defended the disconnection as an inadvertent mistake, and sought to blame Radiofone for that mistake.<sup>4</sup> Specifically, BMI relied upon an affidavit of Reid

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<sup>4</sup> BMI also claimed that "Radiofone customers had manual roaming available to them at all times." Answer, at 10. That assertion was factually incorrect, however. See Reply,

Ann Stephens purporting to form the basis of an incorrect belief on BMI's part that Radiofone had an ownership interest in the Lafayette non-wireline system. BMI asserted that such an ownership interest would have justified the roaming disconnection. See Answer, at 10-11, Attachments 8, 9, 10, 15.

There was no evidence produced by BMI indicating that Radiofone reasonably led BMI to believe it had any such ownership interest. BMI claims it relied on misinformation generated within BMI regarding such an ownership interest, see Answer, Attachment 15, at 2, but it is difficult to credit this explanation.<sup>5</sup> For instance, under BMI's logic that non-affiliated "home system" roamers were not entitled to roam on BMI's frequency block, BMI should have also interrupted the Lafayette non-wireline system subscribers' ability to roam in the Baton Rouge and New Orleans markets. BMI did not interfere with the roaming ability in those markets, however. See Reply, at 12, Attachment A. In addition, the ownership of the Lafayette non-wireline cellular system was a matter of record in the Commission's station file for CRS Station KNKA458. A simple review of that station file would have disclosed that Radiofone had no ownership interest in Lafayette.

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Attachment C (Declaration of Paula Rhodes).

<sup>5</sup> As Radiofone indicates, correspondence from Radiofone which is referenced in Reid Ann Stephens' Affidavit reflects Radiofone activity as a roaming coordinator for the Lafayette non-wireline system. See Reply, at 11 n.5. BMI has been unable to produce any documents from Radiofone showing that Radiofone had an ownership interest in Lafayette.



Moreover, the sequence of events surrounding the disconnection undercuts BMI's claims. As Radiofone's Reply pointed out, the Lafayette non-wireline cellular system came on line on or about April 8, 1988. Yet Radiofone's customers had been experiencing roamer disconnection by BMI in February of 1988, well before the system in which Radiofone supposedly had an ownership interest became operational. Indeed, those problems only worsened after Radiofone complained to the Enforcement Division in June, 1988 about BMI's other anticompetitive practices. BMI's explanation that suddenly -- and incorrectly -- it thought Radiofone had such an ownership interest in July, 1988, and disconnected service, just does not wash. This is particularly the case given BMI's advertising campaign, and apparent marketing campaign, touting the lack of automatic roaming capability by BMI's competitors, and specifically Radiofone's lack of roaming capability in Lafayette. See Reply, at 10-13 & n.6.

**B. The First Supplement to the Complaint**

On January 15, 1991, Radiofone filed its first Supplement to Complaint concerning anticompetitive activity undertaken by BMI against Baton Rouge Cellular Telephone Company (BRCTC), a commonly-controlled affiliate of Radiofone. Specifically, BMI had proposed, through its affiliates, to use cellular facilities in the Baton Rouge MSA to provide cellular service to its Baton Rouge customers while they were travelling in the adjacent